



# **Forensic Science Regulator Guidance**

**Expert Report Guidance**

**FSR-G-200**

**Issue 4**

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## **PART 1 - INTRODUCTION**

### **1. PURPOSE**

- 1.1.1 This guidance sets out the legal requirements for expert reports and requirements imposed by certain prosecuting authorities. It also provides advice in relation to the application of those requirements and more generally.
- 1.1.2 This guidance has been issued to support the operation of the Codes of Practice and Conduct for Forensic Science Providers and Practitioners to the Criminal Justice System (the Codes) [1]. In particular the provisions with regard to section on Reporting the Results of the Codes and the Code of Conduct.
- 1.1.3 This guidance provides support for, and clarification of, the operation of the Codes. In the event of any conflict with the provisions of the Codes then the Codes shall prevail.
- 1.1.4 As a result of its status as guidance this document avoids the use of prescriptive language. This should not be taken to suggest that requirements set out in the Codes are not mandatory. Similarly it does not suggest legal obligations are not mandatory.

### **2. SCOPE**

- 2.1.1 This guidance is applicable to expert reports produced for use in evidence in the Criminal Justice System (CJS) in England and Wales.
- 2.1.2 An expert report is required when the witness will, either in the report or in testimony at court, provide evidence of opinion. For the purposes of this guidance an expert is a person who provides material to the Criminal Justice System where it is possible that this will lead to a requirement to provide evidence of opinion.
- 2.1.3 This guidance does not apply to statements used in the coroners' courts. Compliance with this guidance does not render a statement inadmissible in a coroner's court but some of the content is not relevant.
- 2.1.4 The requirements set out in this document do not apply to 'informal' documents produced by experts with no intention that they be used as evidence (e.g. a note clarifying issues).

### 3. RESERVATION

3.1.1 This guidance is believed to be accurate at the time of publication but it is the duty of each provider, and every expert, to ensure it meets the legal obligations and to keep up to date with those obligations.

### 4. STRUCTURE

4.1.1 This guidance has the following structure.

- a. General Information.
- b. Requirements which apply to expert reports in general (thus applying to those instructed by the prosecution and defence).
- c. Requirements which apply to expert reports commissioned, in England and Wales by:
  - i. The police; and/or
  - ii. The Crown Prosecution Service.
- d. Declarations.
- e. General Guidance.

### 5. ISSUE

5.1.1 Issue 4 of this guidance was issued on 15<sup>th</sup> May 2020.

### 6. MODIFICATION

6.1.1 This is the fourth issue of this document.

6.1.2 Significant changes to the text have been highlighted in grey.

6.1.3 The modifications made to create Issue 4 of this document were, in part, to ensure compliance with The Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018.<sup>1</sup>

6.1.4 The Regulator uses an identification system for all documents. In the normal sequence of documents this identifier is of the form 'FSR-#-###' where (a) the

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<sup>1</sup> To facilitate compliance with the Regulations changes to the document are noted here. The following sections of the document have been changed – 5.1.1, 6.1.1, 6.1.2, 6.1.3, 6.1.4, 6.1.5, 6.1.6, 8.3.1.a, 8.3.2, 10.3.3, 14.2.9, 18 and 19. The following footnotes have been altered – 1, 2, 3, 9, 10, 14, 15 and 16.

'#' indicates a letter to describe the type or document and (b) '###' indicates a numerical, or alphanumerical, code to identify the document. For example, the Codes are FSR-C-100. Combined with the issue number this ensures each document is uniquely identified.

6.1.5 In some cases, it may be necessary to publish a modified version of a document (e.g. a version in a different language). In such cases the modified version will have an additional letter at the end of the unique identifier. The identifier thus becoming FSR-#-####.

6.1.6 In all cases the normal document, bearing the identifier FSR-#-####, is to be taken as the definitive version of the document. In the event of any discrepancy between the normal version and a modified version the text of the normal version shall prevail.

## PART 2 - GENERAL

### 7. LEGAL INFORMATION

7.1.1 The information provided in this guidance is based on the legal position set out in the document FSR-I-400 [2].

### 8. REPORTS

8.1.1 This guidance applies to reports produced by expert witnesses to be used in evidence in the CJS.

8.1.2 A report is, subject to the points below, any document produced by an expert setting out the results of their work and/or their interpretation of the results of their work or the work of others.

#### 8.2 Certificates

8.2.1 A certificate (e.g. a certificate issued under the provisions of the Road Traffic Offenders Act 1988) is not a report for the purposes of this guidance.

8.2.2 The content of a certificate must comply with the provisions of the statute which created the right to use the certificate.

### 8.3 Streamlined Forensic Reports

8.3.1 Level 1 Streamlined Forensic Reports (SFR1) are supposed to be a summary of an expert's evidence served on the other party (routinely the defence) to obtain agreement of the evidence under the provisions of Rule 19.3(1) of the Criminal Procedure Rules (CrimPR).<sup>2</sup> The SFR1 does not have to be prepared by the expert whose views are summarised within it. There are a number of consequences of this.

- a. SFR1 are not intended to be used in evidence, other than as agreed fact, so the requirements which apply to statements (see below) do not apply.
- b. SFR1 are not served under Rule 19.3(3) of the CrimPR and, as a result, the provisions of Rule 19.4 of the CrimPR do not apply.
- c. As the provisions of Rule 19.4 CrimPR do not apply many of the declarations required by Part 19 of the Criminal Practice Directions do not apply.

8.3.2 It follows that SFR1 cannot, other than as agreed fact, be used as evidence.

8.3.3 Level 2 Streamlined Forensic Reports (SFR2) are intended to be used as evidence and must comply with the provisions of Rule 19.4 CrimPR and the relevant sections of Part 19 of the Criminal Practice Directions. SFR2 may also have to comply with the provisions applying to statements (see the discussion below).

### 8.4 Statements

8.4.1 A statement is one form of a report. It is formatted to comply with the provisions of s9 Criminal Justice Act 1967.

## 9. ADMISSIBILITY OF EXPERT REPORTS

### 9.1 Report/Statement/Other

9.1.1 The evidence of an expert witness can be adduced in court by means of a document under the provisions of s9 Criminal Justice Act 1967 or s30 Criminal

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<sup>2</sup> The CrimPR and Criminal Practice Directions are available at [www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu-2015](http://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu-2015). URL accessed on 18 April 2020.

Justice Act 1988. A document admissible under the provisions of s9 is a statement.

- 9.1.2 It follows that a report can be admissible under either provision but must comply with the requirements of the legislation under which it is being adduced.
- 9.1.3 It is common practice for expert evidence to be adduced by means of a s9 statement. However, this is not essential.
- 9.1.4 Section 30 does not prescribe any particular format or content requirements for an expert's report.
- 9.1.5 As the Crown Prosecution Service (CPS) believes the use of the provisions of s9 Criminal Justice Act 1967 will continue to be the normal means for handling expert evidence this document will assume the required output of an expert's work will be a report which is formatted as a statement. These will be referred to as both statement and report and refer to the legislation relating to each.

## **PART 3 - REQUIREMENTS**

### **10. GENERAL REQUIREMENTS**

#### **10.1 Content Requirements**

- 10.1.1 The requirements for content in an expert's report, other than the normal content to be expected (e.g. the details of the examination undertaken, the results of the examination and the interpretation of the results), arise from a number of sources. These include, but are not limited to, the following.
  - a. The provisions of s9 Criminal Justice Act 1967 which apply to statements only.
  - b. The requirements of the CrimPR which either (a) apply to any report or (b) apply to a report issued under Rule 19.3(3).
  - c. The requirements of the Criminal Practice Directions which either (a) apply to any report or (b) apply to a report issued under Rule 19.3(3).
  - d. Judgments of the courts. A number of the requirements from judgments have been codified into the CrimPR.
- 10.1.2 In this document the text will make clear whether content is required in a statement or in a report. Requirements for a report apply equally to a statement.

## 10.2 Declarations

- 10.2.1 A number of the requirements for content can be addressed, or must be addressed, by a declaration in the statement or report.
- 10.2.2 The Criminal Practice Directions require a number of declarations to be included. The requirements of the Directions overlap significantly with the requirements created by statute and the CrimPR but there are requirements additional to those in the Directions.

## 10.3 Mandatory Content

### Requirements

- 10.3.1 A statement must, at the start, provide the following information.
- a. The name of the witness; and
  - b. The age of the witness if they are under eighteen.
- 10.3.2 A statement must be signed by the witness.
- 10.3.3 The signature on a report/statement does not have to be created by physically signing the report/statement using ink. Electronic signatures are acceptable. Rule 5 of the CrimPR recognises this and s7 Electronic Communications Act 2000 provides that such signatures are acceptable. There are no specific requirements (technical or otherwise) for electronic signatures but the signature must be added to the report/statement by, or on the authority of, the person making the report/statement.
- 10.3.4 A report must contain the same declaration of truth as a statement (see below). As the declaration must be signed it follows a report must be signed.

### Declarations

#### *Statement of Truth*

- 10.3.5 A report must incorporate a declaration that the author makes the report believing its content to be the truth (to the best of their knowledge and belief) and understanding that if it is tendered in evidence they would be liable to prosecution if they wilfully stated in it anything they knew to be false or did not believe to be true.



10.3.6 Suitable wording appears in the criminal procedure forms linked to Part 16.2 of the Criminal Procedure Rules:<sup>3</sup>

“This statement (consisting of # pages) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.”<sup>4</sup>

10.3.7 See the discussion at paragraph 10.5.5 in relation to a possible alteration to this wording.

#### *Duty to the Court*

10.3.8 A report must include a declaration to the effect that the witness has complied with, and will continue to comply with, their duty to the court to provide independent assistance by way of objective unbiased opinion in relation to matters within their expertise and an acknowledgment that the witness will inform all parties and where appropriate the court in the event that his/her opinion changes on any material issues.

10.3.9 The text in section 10.3.8 can act as the basis for an appropriate declaration.

#### *Number of Pages*

10.3.10 As indicated at 10.3.6 the report should contain a declaration as to the number of pages of which it is comprised.

#### Content

##### *Expertise*

10.3.11 A report must set out the expertise of the witness.

##### *Qualifications*

10.3.12 A report must provide details of the expert’s qualifications, relevant experience and accreditation.<sup>5</sup>

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<sup>3</sup> This is available at [www.justice.gov.uk/courts/procedure-rules/criminal/docs/october-2015/ws001-eng.pdf](http://www.justice.gov.uk/courts/procedure-rules/criminal/docs/october-2015/ws001-eng.pdf). This URL was accessed on 18 April 2020.

<sup>4</sup> The term statement is used in the quote as this is taken from a section dealing with evidence generally. In the case of expert evidence this term may be replaced by “report” and indeed the Criminal Practice Directions do so.

<sup>5</sup> In forensic science the term “accreditation” is normally interpreted as a reference to accreditation to an international standard. While it is possible that an individual will be so accredited it is unusual. In the context of the Rules the term must therefore be interpreted to have a wider meaning such as “the official recognition of someone as having a particular status or being qualified to perform a particular

- 10.3.13 Where the witness provides an opinion based solely on their experience it is important that the statement make clear, in detail, the experience which allows the expert to proffer that opinion.
- 10.3.14 The witness must state any limitations to their experience and whether any particular issue, which is discussed in the statement (or on which they had been requested to discuss), falls outside their expertise.
- 10.3.15 The witness must give a fair and balanced picture of their experience and not only refer to positive comments in judgments etc.
- 10.3.16 Where the report sets out a provisional opinion this should be made clear.
- 10.3.17 Traditionally the information provided included the academic and professional qualifications held, the post held by the witness, the types of expert examination the witness performs and the length of time which the witness has performed those examinations.
- 10.3.18 Consideration should also be given to the following information which may be of use to the CJS.
- a. The nature of the cases the witness has dealt with.
  - b. The types of evidence given.
  - c. The courts involved (e.g. magistrates' courts, Crown Court or appellate courts).
  - d. Whether the witness tends to work for the prosecution, defence or both.
  - e. Whether the witness has been the subject of criticism and is aware of that criticism.

*Qualifications – Membership of Bodies*

- 10.3.19 The provision of qualifications and experience in an expert's report is to support the claim to expertise. The listing of memberships of organisations should be considered in that context.
- 10.3.20 The membership of an organisation which is obtained solely by applying for membership (and perhaps, payment of a fee) is not a qualification. This is true

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activity". Where the individual works for an organisation which is accredited to an international standard this can be dealt with elsewhere.

even if the holding of some other qualification (e.g. a degree), or some period of experience, is a prerequisite to making the application.

- 10.3.21 The membership of an organisation can only be considered a qualification when conferring the membership, or the specific class of membership, is based on an assessment involving evaluation of the professional conduct and/or performance of the applicant.
- 10.3.22 Consideration must also be given to the nature of the organisation. Listing membership of organisations which do not have some form of official standing to grant qualifications (e.g. by grant of a Royal Charter) is of limited value.
- 10.3.23 Listing of memberships of organisations which do not amount to qualifications in reports is, at the least, irrelevant and may be misleading. The same is true of the use of post nominal letters.

*Literature and Information Relied On*

- 10.3.24 The report must include details of literature or other information relied upon on its preparation. The information must include sufficient detail to enable another expert to identify the relevant document.
- 10.3.25 Experts provide reports based on their expertise. This may have been amassed over many years and involved the consideration of many books, papers and other sources of information. It is clearly not practical, or desirable, to list all of this material in a report.
- 10.3.26 The report should set out any literature or other information used specifically to produce the opinions contained within it. It does not have to list all of the material which forms part of the general expertise of the witness.
- 10.3.27 The information used does not have to be in the public domain. The information must, subject to possible legal restrictions on disclosure, be available to the other party.
- 10.3.28 Where the expert has not relied on material which the parties might reasonably assume has been considered it would be appropriate to make this clear.

*Facts and Assumptions*

- 10.3.29 The report must set out the facts and assumptions which the witness relied upon in producing their opinion. This includes, but is not limited to, the following.
- a. Information provided by the party instructing them.
  - b. Information set out in witness statements.
  - c. Information generated by other experts.
- 10.3.30 Results obtained by assistants working for the witness are discussed below.
- 10.3.31 The report should set out the results obtained by the witness and on which they base their opinion. It is not necessary to set out all of the results obtained in the examination (e.g. all results from analytical systems) but the analytical methods employed and the overall result of each analysis should be clear.
- a. The results presented should accurately represent the totality of the results.
  - b. Results which might undermine the opinion given should be set out.
  - c. Sufficient results should be provided to justify the opinion expressed.
- 10.3.32 It must be clear which facts are within the witness's own knowledge.
- 10.3.33 All of the results obtained should be available for disclosure if requested/required. It is good practice to make this clear in the report.

*Assistance*

- 10.3.34 Where the expert has relied on a representation of fact or opinion by another person when developing their opinion, they must:
- a. Identify the person who made that representation to the expert;
  - b. Give the qualifications, relevant experience and any accreditation of that person; and
  - c. Certify that that person had personal knowledge of the matters stated in that representation. This is not limited to other scientists/experts.<sup>6</sup>
- 10.3.35 It should also be clear whether the work was carried out under the witness's direct supervision.

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<sup>6</sup> This information may be set out in an appendix to the report.

- 10.3.36 The results obtained by this work should be summarised.
- 10.3.37 The issue of when an expert relies on a representation of fact or opinion has been considered and guidance is provided in Appendix 3.

*Range of Opinion*

- 10.3.38 Where the witness is aware that reputable experts in the field would hold a range of opinions on the issue under consideration, the report must set out what that range is and justify why the witness's opinion falls at a particular point within that range.
- 10.3.39 The requirement should be interpreted to limit the requirement to opinions held by reputable experts in the field. It would be impractical, and be of no benefit to the CJS, to provide the opinions of persons who are not properly qualified to express them. Of course this does not mean that opinions can be ignored just because the expert disagrees with them.

*Qualification as to Opinion*

- 10.3.40 If the witness is not able to provide an opinion without some limitation or qualification this must be clearly set out in the report.
- 10.3.41 If the witness is aware of any information which would detract from their opinion this must be set out in the report. This is extremely important.
- 10.3.42 Particular care should be taken to make the following issues clear in the report.
  - a. Any results obtained which would undermine the opinion expressed in the report.
  - b. Any work, or other information, the witness is aware of which would undermine the opinion expressed in the report.
  - c. Any limitations to the analytical approach adopted.
  - d. Any limitations to the interpretation model adopted.
  - e. If the work was not undertaken in an appropriate quality framework or relevant standards not adhered to.
  - f. The uncertainty of measurement associated with the methods employed and the manner in which this has been addressed.
- 10.3.43 In this area the term "undermine the opinion" should be considered to include any information which would do any of the following.

- a. Undermine the opinion expressed by the witness.
- b. Undermine the proposition put forward by the party instructing the witness (or calling them as a witness).
- c. Support the proposition put forward by the other party (if known).<sup>7</sup>

10.3.44 Where the witness has not been able to fully research the opinion set out in the statement this must be made clear.

10.3.45 The witness may take the view that their opinion is limited by the range of examinations which were undertaken in the case. In such circumstances this should be made clear in the report. This should be interpreted as requiring disclosure of other work which may have had a significant impact on the report. It should not be a list of all other examinations which might have been undertaken in the case.

#### *Reliability*

10.3.46 The report must contain such information as is necessary to allow the court to determine that the evidence is sufficiently reliable to be admitted.

10.3.47 Part 19 of the Criminal Practice Directions provides advice on the nature of the information to be provided. See the discussion on disclosure below.

#### *Conclusions*

10.3.48 The witness must set out their conclusions in any report.

10.3.49 The conclusions must be explained.

#### Exhibits

10.3.50 Reports often include references to exhibits.

10.3.51 Part 16.3 of the CrimPR is worded as follows.

“16.3. Where the statement refers to a document or object as an exhibit, it must identify that document or object clearly.”

10.3.52 The text refers specifically to statements but it appears sensible for the requirement to be met in reports.

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<sup>7</sup> If the proposition is not known consideration should be given to the propositions which are likely.

## 10.4 Form

### Units of Measurement

- 10.4.1 Where the report includes results of any measurement these should be, except as noted below, provided in the appropriate SI Units, SI Derived Units or units accepted for use with the SI system. It is acceptable to provide the results in other units (e.g. imperial units) as long as these are provided after the SI Units and not more prominent. It is also acceptable to provide a conversion factor.
- 10.4.2 It is acceptable to use imperial measures in relation to road traffic signs, distance and speed. The relevant units being mile, yard, foot and inch. It is also acceptable to use the pint when dealing with dispensing draught beer and cider or milk in returnable containers.
- 10.4.3 The use of imperial units for designations or descriptions as opposed to results of measurement (e.g. in the description of the calibre of weapons or ammunition) is acceptable.

### Legal Limits and Units

- 10.4.4 Where the report involves comparison of results against any legal limit or requirement (e.g. alcohol in blood) the results should be provided in the same units as the limit/requirement is set.

## 10.5 Non-Mandatory Content

### Age

- 10.5.1 It is common practice for witnesses who are over eighteen years of age to state this at the start of the report. There is no legal requirement to do so.

### Occupation

- 10.5.2 It is common practice for witnesses to state their occupation at the start of the report. There is no legal requirement to do so.

### Page Signing

- 10.5.3 It is common practice for witnesses to sign each page of the report. There is no legal requirement to do so.

10.5.4 It may be a useful practice as it ensures the report is comprised of content which the witness has confirmed.

10.5.5 Where this practice is adopted the declaration of truth (see 10.3.6 above) may be altered to read as follows.

“This statement (consisting of # pages each signed by me) is true ...”<sup>8</sup>

#### Heading

10.5.6 The form linked to Part 16.2 of the Criminal Procedure Rules uses a heading as follows.

“STATEMENT OF WITNESS

(Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s. 9)”

10.5.7 There is no requirement for this, or any header, to be used but it may be advisable to incorporate a header.

10.5.8 Due to confusion over what is a report, what is a statement and the admissibility of each it is suggested that it should be made clear the expert is issuing a report which is also a statement. This allows the use of both s9 Criminal Justice Act 1967 and s30 Criminal Justice Act 1988. The recommended form of the header is therefore the following.

“REPORT AND STATEMENT OF WITNESS

(Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s. 9; Criminal Justice Act 1988, s. 30)”

#### Continuity

10.5.9 The admissibility of evidence is linked to its relevance to matters in issue in the case. It follows that it can only be relevant and admissible if there is a chain of continuity.

10.5.10 It is therefore common practice for witnesses to state, in the report, the date on which they took control of the exhibits and the source of those exhibits.

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<sup>8</sup> The term ‘statement’ is used as the text is intended for more general use.



### Disclosure Duty

- 10.5.11 The document FSR-I-400 [2] sets out the disclosure obligations on expert witnesses. Generally, these requirements are met by providing information in the report issued by the expert.
- 10.5.12 In April 2019 the Criminal Procedure Rules were altered to create a requirement for expert witnesses to declare, to the party instructing them, any information which could potentially undermine the expert’s credibility. In most cases this information will be provided in the report issued by the expert as there will be a co-existing obligation to disclose the information to the CJS. In cases where the information could undermine the credibility of the expert but could not undermine the credibility of the evidence provided by the expert the information should be provided to the instructing party. This should be done in writing and a record kept of the information provided.

## **11. REPORTS COMMISSIONED BY THE POLICE OR CPS**

- 11.1.1 The Crown Prosecution Service “Disclosure Manual” incorporates requirements for expert witnesses instructed by the CPS [3].
- 11.1.2 The Manual is available online at URL: <sup>9</sup> [www.cps.gov.uk/legal-guidance/disclosure-manual](http://www.cps.gov.uk/legal-guidance/disclosure-manual).
- 11.1.3 Specific guidance to expert witnesses is available online at URL: <sup>10</sup> [www.cps.gov.uk/legal-guidance/cps-guidance-experts-disclosure-unused-material-and-case-management](http://www.cps.gov.uk/legal-guidance/cps-guidance-experts-disclosure-unused-material-and-case-management).

### **11.2 Disclosure Duty**

- 11.2.1 The Manual requires that a report should include a declaration which confirms that the witness understand their duty to the court in respect of disclosure
- 11.2.2 The required wording is as follows.

“I am an expert in [field of expertise] and I have been requested to provide a statement. I confirm that I have read guidance contained in a booklet known as Guidance Booklet for Experts - Disclosure: Experts’ Evidence, Case Management and Unused Material which details

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<sup>9</sup> This URL was accessed on 18 April 2020.

<sup>10</sup> This URL was accessed on 18 April 2020.

my role and documents my responsibilities, in relation to revelation as an expert witness. I have followed the guidance and recognise the continuing nature of my responsibilities of revelation. In accordance with my duties of revelation, as documented in the guidance booklet, I

(a) confirm that I have complied with my duties to record, retain and reveal material in accordance with the Criminal Procedure and Investigations Act 1996, as amended;

(b) have compiled an Index of all material. I will ensure that the Index is updated in the event I am provided with or generate additional material; (c) that in the event my opinion changes on any material issue, I will inform the investigating officer as soon as reasonably practicable and give reasons.”<sup>11</sup>

### 11.3 Additional Requirements

#### Self-Certificate

11.3.1 The Disclosure Manual sets out a requirement for an expert witness to produce a self-certificate (a pro-forma is provided in the Manual) providing basic information about their status.

#### Disclosure Index

11.3.2 The Manual sets out a requirement that an expert complete and submit a disclosure index as set out in the Manual.

### 11.4 Optional Declaration

11.4.1 Where there is a risk the report in case may be re-used in a civil process, with different obligations and potentially a different fee structure for attendance, it may be appropriate to add the following:<sup>12</sup>

“This report must not be used outside of the Criminal Justice System without prior agreement.”

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<sup>11</sup> The text refers to ‘statement’, but this was published before the issues or report/statement definition arose and should therefore be interpreted as applying equally to reports. As the CPS normally adduces evidence by way of a s9 statement the wording will normally be correct, but it may have to be modified to refer to a report,

<sup>12</sup> Restrictions on the use of the report should have been agreed with the customer at the stage the work is agreed.

## **PART 4 – DECLARATIONS**

### **12. General**

12.1.1 The discussion above makes clear that a number of the requirements can be, or must be, achieved by the inclusion of a declaration in the report.

12.1.2 Part 19 of The Criminal Practice Directions sets out a series of declarations which must be included in a report to satisfy, or assist in satisfying, a number of the CrimPR requirements. However, it must be recognised that the set of declarations required by the Directions is not comprehensive.

### **12.2 Consideration**

12.2.1 In light of the above, consideration was given to all requirements for content which either required a declaration or which could be addressed by the inclusion of a declaration.

12.2.2 Annex 1 provides the results of this consideration.

12.2.3 It is not necessary that all of the declarations appear at the start of the report but there is a subset which should be at the start.

12.2.4 Annex 2 discusses which of the declarations should be at the start of the report.

## **PART 5 – GUIDANCE**

### **13. INDEPENDENCE AND IMPARTIALITY**

13.1.1 Expert witnesses are required to assist the Court by the provision of independent and impartial advice. It is, therefore, advisable to avoid using any wording which suggests they are partial or biased. Content which may give rise to concern includes the following.

- a. References to acting for a party to the case.
- b. Reference to supporting the case put forward by a party.
- c. Reference to the evidence supporting the case put forward by a party.
- d. Indicating a concluded view on a matter which is in issue in the case.  
Examples include the following.
  - i. The guilt or innocence of the accused.

- ii. Whether a crime, or a particular crime, has been committed (e.g. reference to “the murder victim”).
  - e. Describing the information provided by one party as ‘facts’ and the information provided by the other party as a ‘version’.
  - f. Provision of tactical advice as to the conduct of the case by either party.
- 13.1.2 It is acceptable to state the evidence supports the hypothesis put forward by a party or the factual basis of such a hypothesis.
- 13.1.3 It is acceptable for the statement to include comment on the possible impact of the evidence on the case (e.g. whether the results would support, or not support, a prosecution or a particular defence hypothesis) but not to provide tactical advice on the conduct of the case.
- 13.1.4 It is always wise to use balanced terminology, such as “whether or not”, “support or refute”.
- 13.1.5 The Association of Forensic Science Providers has published guidance on reports [4]. This sets out principles to be adhered to in reporting. These include:
  - a. Balance;
  - b. Logic;
  - c. Robustness; and
  - d. Transparency.
- 13.1.6 The use of such principles would assist in meeting the requirements for independence and impartiality.
- 13.1.7 The Regulator is developing standards which will address similar issues.

#### **14. CLARITY**

- 14.1.1 The report may be used, without any additional information/assistance from the witness, to make decisions about the conduct of the case (by both parties) or as evidence. The statement should be clear, unambiguous and be capable of being understood by persons (e.g. jurors) who do not have the technical understanding of the witness.

Checking

- 14.1.2 It is good practice to have the report checked by someone other than the witness. The purposes of such a check can include the following.
- a. To ensure the report properly addresses the issues about which the expert has been instructed.
  - b. To ensure the conclusions drawn are supported, and can logically be derived from, the information set out in the statement.
  - c. That the report is clear, unambiguous and understandable by the general public.
- 14.1.3 While the check is not intended as a proof reading exercise it is helpful if spelling and grammatical issues are identified.

Consistent

- 14.1.4 The term “consistent” has been criticised by the Courts. It can sound significant but, in reality, mean little. It is, therefore, advisable to avoid the term.
- 14.1.5 The term “not consistent” is usually clear and does not give rise to the same issues.

Units

- 14.1.6 As noted above, the results should, normally, be provided in SI Units. It is acceptable to provide supplementary indicators.
- 14.1.7 While it is acceptable to provide a conversion factor (without providing the imperial equivalent as a secondary indicator) this is not advisable. It creates the risk that the witness will attempt to convert figures from SI to imperial while giving evidence. Any attempt to perform calculations while giving evidence creates a risk of making mistakes.

**14.2 CONTENT**

Statistics

- 14.2.1 The Courts have, on a number of occasions, expressed concern about the evidence of complex statistical analysis (e.g. Bayesian inference) being discussed before the jury.

14.2.2 It is therefore advisable to avoid incorporating detailed consideration of such analysis in reports. The statement should set out the model employed and the conclusions drawn.

14.2.3 The details of the analysis should be available for disclosure.

Accreditation

14.2.4 There is no clearly stated legal requirement for a report, or statement, to include a description of any accreditation held by the organisation by which the witness is employed. However, it may be considered part of the information required to allow the court to determine if the evidence is sufficiently reliable. It will be of assistance to the court if such information is presented.

14.2.5 Where an organisation holds accreditation against ISO 17025 its employees may make reference to this in reports and statements. The following principles should be maintained.

- a. Reference to accreditation should only be included in relation to work which is within the scope of accreditation.
- b. Any reference to accreditation should be clear that the accreditation applies to the organisation and the methods employed – not the individual.
- c. It is acceptable for the reference to accreditation to make clear that the competence of staff is assessed as part of the accreditation process.
- d. It should be clear whether the accreditation covers the interpretation and/or assessment work which has been undertaken as opposed to just the analytical methods.

14.2.6 UKAS has published guidance on referring to accreditation [5].

14.2.7 A suitable form of words may be as follows.

“My report is based on the results of analytical work undertaken (a) using documented and validated methods within the scope of the organisation’s UKAS ISO 17025 accreditation [lab reference] and (b) by staff determined to be competent for such work under the organisation’s quality systems which are accredited to ISO 17025. This accreditation does/does not cover the assessment and interpretation of evidence.”

14.2.8 While there may be no direct legal requirement to declare accreditation, there may be an indirect requirement as a result of the disclosure requirements discussed elsewhere in this document. The Regulator requires a declaration of

compliance with the standards established by the Regulator and that may also involve stating whether accreditation has been achieved and maintained.

14.2.9 The Crown Prosecution Service, to facilitate the implementation of The Accreditation of Forensic Service Providers Regulations 2018, may request declarations about accreditation.

## 15. CONTENT OF ANNEX TO SUPPORT A DECLARATION OF NON-COMPLIANCE WITH THE CODE OF CONDUCT

15.1.1 Producing an annex dealing with issues arising from partial or non-compliance to the Code of Conduct allows the complex issue to be dealt with in the statement and could allow forensic units to produce standard lines to take for certain methods. The practitioner submitting it as part of their statement must be prepared to answer questions on the topic should it arise.

15.1.2 It may be appropriate to detail what the forensic unit is doing to address the non-compliance, but it is unwise to attempt to justify the non-compliance.<sup>13</sup> Both the initial statement of non-compliance and the annex should be language suitable to be understood by lay persons, it must not mislead or use jargon or cross references to clauses the reader is unlikely to follow up on.

15.1.3 The Regulator's requirements are detailed in the Statement of Standards and Accreditation Requirements. Non-compliance could be not adhering to one of the separate codes of practices detailed there, or not holding the required accreditation. Where a separate code of practice applies, the nature of divergence from its requirements should to be considered and addressed. The types of issues with the accreditation status of the method used to generate the result reported are expected to fall into the following categories:

- a. Not having the required accreditation;
- b. Having a more limited scope of accreditation than required; or

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<sup>13</sup> Common explanations given to the Regulator for not implementing the full scope of accreditation in time include that the deadline was too short, a management decision was made to phase the implementation or that capacity by the accreditation body was the issue (when it had been a management decision to pursue accreditation in the final year). Such explanations could be considered misleading to the court if not given in a full and balanced way, as well as being irrelevant.

- c. Holding accreditation for the method, not including the Codes of Practice and Conduct in the schedule of accreditation.

15.1.4 If an organisation is in the process of achieving accreditation, and that not yet having accreditation is the reason for declaring non-compliance, caution should be taken how this status is described. For instance working towards accreditation, having applied for accreditation or participation in a pilot scheme do not convey any quality assurance and could mislead. However, if an organisation was in the position to apply for accreditation it should be in the position of being able to make the following positive comments (although do note the advice in the remainder of this section):

- a. The method has been fully and clearly documented;
- b. The staff have been objectively demonstrated to be competent in carrying out the method; and
- c. The performance of the method has been tested in a structured manner known as validation although signed off by my organisation, not yet externally scrutinised.

15.1.5 The following approach focuses on the main non-compliance issue envisaged; the accreditation status. However, the approach detailed may be relevant to many situations of non-compliance.

15.1.6 Accreditation does not remove all risk or prevent any error or mistakes from happening, however by requiring a third-party to look at how a range of issues which affect the quality of the output (such as competence and validation) are dealt with, it does seek to control risk. Therefore, as a minimum the annex should deal with what risks have been identified and how these are mitigated. One way of looking at risk is failure modes and effects analysis. This is a step-by-step approach for identifying what the effect of a quality failure in each stage might have on a finding, as well as consideration of whether the failure would be detected. Failure Mode Effects Analysis (FMEA) done correctly looks at all the stages in the method and what the effect would be at each stage. In a method dealing with a reagent, if a person applied the incorrect amount (e.g. through operator error, use of un-calibrated equipment, the wrong amount specified) how would that affect the result? If the method was searching for images on



computer media, how would an operator error or a bug in the software tool most likely manifest itself – the examiner has found an image, would this have changed the result? The following sections cover these ideas in a little more detail.

- 15.1.7 In the annex, it would be relevant to consider, for example, whether the staff have been objectively determined to be competent. An accredited organisation has some assurance that the system of judging competence is adequate. If there was to be a challenge about the competence of the individual making the factual finding in question, what is the impact of poor competence? What errors could have occurred? For instance, could a different result have resulted as an incorrect setting or amount could have been selected, or would it be more likely that some evidence would not have been found or recovered?
- 15.1.8 Accreditation gives third party assurance that the validation of the methods appears to be sound. The risk when there is no such assurance is that the method has been assumed to be fit for purpose and is not. What validation has been done and how is this method deemed the correct and fit-for purpose method? An un-validated method may have a higher false positive rate than the court might expect. The factual finding that the method gave that result may be correct, but results of an inappropriate method could be misunderstood by the court. Tests that typically have higher false positive/inclusion rates include diagnostic and presumptive tests being used outside of their original use. If, for example, the case involved an indecent image having been detected, then the veracity of that finding can be visually confirmed. If the issue concerns the accuracy of the date/time stamp associated with the image, then in the absence of validation studies, it may not be possible to assure the court of the accuracy of the date/time determined by the method. There may also be a risk that other images exist but were not detected.
- 15.1.9 The guidance published by the Regulator suggests all validations (whether to be used for factual reports or to be the basis of expert opinion) consider 19A5 of the Criminal Practice Directions.
- a. The extent and quality of the data on which the expert's opinion is based, and the validity of the methods by which they were obtained.

- b. If the expert's opinion relies on an inference from any findings, whether the opinion properly explains how safe or unsafe the inference is (whether by reference to statistical significance or in other appropriate terms).
- c. If the expert's opinion relies on the results of the use of any method (for instance, a test, measurement or survey), whether the opinion takes proper account of matters, such as the degree of precision or margin of uncertainty, affecting the accuracy or reliability of those results.
- d. The extent to which any material upon which the expert's opinion is based has been reviewed by others with relevant expertise (for instance, in peer-reviewed publications), and the views of those others on that material.
- e. The extent to which the expert's opinion is based on material falling outside the expert's own field of expertise.
- f. The completeness of the information which was available to the expert, and whether the expert took account of all relevant information in arriving at the opinion (including information as to the context of any facts to which the opinion relates).
- g. If there is a range of expert opinion on the matter in question, where in the range the expert's own opinion lies and whether the expert's preference has been properly explained.
- h. Whether the expert's methods followed established practice in the field and, if they did not, whether the reason for the divergence has been properly explained.

15.1.10 Accreditation gives assurance that the equipment the forensic unit uses is under a quality management system that requires appropriate maintenance and/or calibration. If the calibration was not assured, there could be a number of issues to consider including that a measurement may be false (e.g. of speed, chemical concentration) or the amount of material dispensed might be incorrect (wrong amount of reagent or sample). Does the method deal with these, how would these eventualities manifest themselves and affect the finding, are these uncertainties explained in the report/statement?

15.1.11 This overall approach may be sufficient to detail how risks associated with not fully conforming to a standard have been controlled in an individual case where evidence has been found. It does little to give confidence that there will be

justice for victims of crime in other cases where evidence is not found, where perhaps it would have been had a better method been selected or used by a more competent individual or forensic unit. Therefore, this approach is not a long term alternative to adherence to the correct standards.

## 16. REVIEW

16.1.1 This guidance is subject to review at regular intervals.

16.1.2 If you have any comments or suggestions please send them to the address or e-mail address set out on the Regulator’s Internet site. The URL is: <sup>14</sup>  
[www.gov.uk/government/organisations/forensic-science-regulator](http://www.gov.uk/government/organisations/forensic-science-regulator)

## 17. REFERENCES

- 1 Codes of Practice and Conduct for Forensic Science Providers and Practitioners to the Criminal Justice System.
- 2 Forensic Science Regulator; Legal Obligations, FSR-I-400.
- 3 Guidance Booklet for Experts - Disclosure: Experts' Evidence, Case Management and Unused Material, Published by the Crown Prosecution Service and the Association of Chief Police Officers in England Wales and Northern Ireland, May 2010.
- 4 Association of Forensic Science Providers; “Standards for the formulation of evaluative forensic science expert opinion”; Science and Justice 49 (2009) 161-164.
- 5 United Kingdom Accreditation Service; Reference to Accreditation for Laboratories; LAB 1.

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<sup>14</sup> This URL was accessed on 18 April 2020.

**18. ABBREVIATIONS AND ACRONYMS**

<b>Text</b>	<b>Meaning</b>
CJS	Criminal Justice System
CPS	Crown Prosecution Service
CrimPR	Criminal Procedure Rules
FMEA	Failure Mode Effects Analysis
ISO	International Organization for Standardization
SFR1	Streamlined Forensic Report Level 1
SFR2	Streamlined Forensic Report Level 2
SI	International System of Units (from the French “le Système international d’unités”)
URL	Uniform Resource Locator

**19. ANNEX 1**

19.1.1 In the table below the possible text of a set of declarations to be made in the statement or report is set out. Where the text is taken from Part 19B of the Criminal Practice Directions the appropriate section of the table has thicker **left-hand border**.<sup>15</sup> If any text has been added to the 19B wording this is underlined. The source, other than the requirement of the Criminal Practice Directions, of the requirement for the declaration, or other relevant provisions is provided. Where the issue is addressed in the document FSR-I-400 the relevant section is quoted.<sup>16</sup> There are then comments.

19.1.2 In any report only the text in the first column, the actual declarations, need be provided.

TEXT	SOURCE	FSR-I-400	COMMENT
<p style="text-align: center;">REPORT AND STATEMENT OF WITNESS</p> <p style="text-align: center;">(Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s. 9; Criminal Justice Act 1988, s. 30)</p>		8.3	There is no legal requirement for a header on the statement/report but it is common practice.
<p>I [name] DECLARE THAT:</p>	CrimPR 16.2		<p>CrimPR 16.2 requires that the name of the author must be at the beginning of the statement.</p> <p>It appears logical that a report should mirror this requirement</p>

<sup>15</sup> The sections taken from the Criminal Practice Directions are parts 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18 and 19.

<sup>16</sup> The sections quoted in this issue relate to Issue 5 of the Codes.

TEXT	SOURCE	FSR-I-400	COMMENT
Age	CrimPR 16.2	8.3	<p>Where the author is under 18 the age must be provided. Common practice for persons over 18 to state age as “over 18”</p> <p>CrimPR 16.2 requires that the age, if under 18, must be provided at the beginning of the statement.</p>
1. I am an expert in the field of [expertise]	CrimPR 19.2(3)	8.5	CrimPR 19.2(3) section required the expert to state their expertise
2. My qualifications and experience are [insert relevant information]	<i>R v. Bowman</i> CrimPR 19.4(a)	8.7	CrimPR 19.4(a) requires the expert to set out their qualifications, experience and accreditation.
3. [Either]  I carried out all examinations, measurements, test or experiments which I have referred to in the report.  [or]  The person(s) who work for my, or sub-contract to, organisation listed at [provide location (e.g. an annex)] provided representations of fact or opinion on which I have relied in developing my opinion/report. I certify that each of the named individuals had personal knowledge of the matters raised in the representations. The information required by CrimPR 19.4(e) is also provided in [specify location].	CrimPR 19.4(e)		The CrimPR requires the report make clear on the representations of fact/opinion relied on by the expert and certain matters about who made those representations.

TEXT	SOURCE	FSR-I-400	COMMENT
<p>Information about others involved in the examination of items in this matter is recorded in the appropriate files.</p> <p>[Note: where there has been reliance on the work of persons who are not part of (or sub-contract to) the same organisation (e.g. another expert or police officer) it may be advisable to add the following text.]</p> <p>I have, in the preparation of this report relied on the work of other persons. These persons are named in this report. The qualifications of those persons are, or will be, set out in their reports (to which I refer) and the personal knowledge of the person is or will be established by the declaration of truth contained in those reports.</p>			
<p><u>4.</u> I understand that my duty is to help the court to achieve the overriding objective by giving independent assistance by way of objective, unbiased opinion on matters within my expertise, both in preparing reports and giving oral evidence. I understand that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied with and will continue to comply with that duty.</p>	<p><i>R v. Bowman</i> CrimPR 19.4(j)</p>	<p>8.15</p>	
<p><u>5.</u> I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.</p>			

TEXT	SOURCE	FSR-I-400	COMMENT
<p>6. [Either]</p> <p>I am not aware of any conflict of interested created by my role as an expert witness in this matter.</p> <p>[or]</p> <p>The following issues may be viewed as creating a conflict of interest in relation to my role as an expert witness in this matter. [discuss relevant issues]</p>	<p><i>Toth v. Jarman</i></p>	<p>7.15</p>	<p><i>Toth</i> requires that any conflicts of interest be declared. The text of paragraph 3 of the CPD 19B text alludes to a declaration of any conflict of interest.</p> <p><i>Toth</i> only requires a declaration if there is a conflict of interest.</p> <p>Given the text of 19B it appears sensible to incorporate a declaration of this form.</p> <p><i>Toth</i> requires that any potential conflict of interest be disclosed. It does not require a declaration.</p>
<p><u>7.</u> I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.</p>			



TEXT	SOURCE	FSR-I-400	COMMENT
<p><u>8.</u> I will advise the party by whom I am instructed if, between the date of my report and the trial, there is any change in circumstances which affect my answers to points <u>6</u> and <u>7</u> above.</p>			<p>This is a logical extension of the <i>Toth</i> requirement. There is, however, no requirement for a declaration set out in <i>Toth</i>.</p>
<p><u>9.</u> I have shown the sources of all information <u>specific to this matter (including literature)</u> I have used.</p>	<p>CrimPR 19.4(a) CrimPR 19.4(b)</p>	<p>8.8 8.9</p>	<p>The CrimPR sections require the report make clear the source of the information used. It does not require a declaration.</p>
<p><u>10.</u> I have exercised reasonable care and skill in order to be accurate and complete in preparing this report.</p>	<p><i>R v. Bowman</i></p>	<p>5.7</p>	<p>The case creates the requirement to use skill and care but does not create a requirement for a declaration that it has been done.</p>
<p><u>11.</u> I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.</p>	<p><i>R v. Ward</i> <i>R v. Harris &amp; Ors</i> <i>R v. Bowman</i> CrimPR 19.3(3)(c) CrimPR 19.4(h) CrimPR 19.4(g)</p>	<p>6.2 8.12 8.17</p>	<p><i>Ward</i> makes clear that witnesses for the prosecution must disclose anything which undermines the evidence. The other cases make clear any limitation on the opinion must be disclosed. This position is reflected in CrimPR 19.4(g).</p>

TEXT	SOURCE	FSR-I-400	COMMENT
			<p>CrimPR19.4(h) requires the report provide information with regard to reliability.</p> <p>CrimPR 19.3(3)(c) requires the party to disclose any information which would undermine the credibility of the expert.</p> <p>None of these provisions require a declaration in the statement/report.</p>
<p><u>12.</u> I have not, without forming an independent view, included or excluded anything which has been suggested to me by others including my instructing lawyers.</p>	<p><i>R v. Harris &amp; Ors</i></p>		<p><i>Harris</i> requires the evidence is independent evidence but does not require a declaration.</p>
<p><u>13.</u> I will notify those instructing me immediately and confirm in writing if for any reason my existing report requires any correction or qualification or if my opinion, set out in the report, changes in a material way.</p>	<p><i>R v. Bowman</i> <i>R v. Harris &amp; Ors</i></p>	<p>8.5</p>	<p>This is close to meeting the “change of opinion” requirement in <i>Bowman</i> but it does not address it entirely.</p>
<p><u>14.</u> I understand that:</p>			

TEXT	SOURCE	FSR-I-400	COMMENT
<p>(a) my report will form the evidence to be given under oath or affirmation;</p> <p>(b) the court may at any stage direct a discussion to take place between experts;</p> <p>(c) the court may direct that, following a discussion between the experts, a statement should be prepared showing those issues which are agreed and those issues which are not agreed, together with the reasons;</p> <p>(d) I may be required to attend court to be cross-examined on my report by a cross-examiner assisted by an expert.</p> <p>(e) I am likely to be the subject of public adverse criticism by the judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.</p>			
<p>15. I have read Part 19 of the Criminal Procedure Rules [insert version] and I have complied with its requirements.</p>			
<p>16. I understand that a number of provisions of Part 19 of the Criminal Procedure Rules (in particular the provisions of 19.4 sections (c), (d), and (f)) have to be addressed in the body of the report.</p>			
<p>17.[Either]</p>	<p><i>R v. Ward</i></p>		<p>The failure to adhere to relevant published standards is clearly a matter which could undermine the evidence.</p>

TEXT	SOURCE	FSR-I-400	COMMENT
<p>I confirm that I have acted, to the best of my knowledge and belief, in accordance with the Code of Conduct published by the Forensic Science Regulator [insert issue] <sup>17</sup> <sup>18</sup></p> <p>[Or]</p> <p><u>I confirm that, to the best of my knowledge and belief, I have acted in accordance with the Code of Conduct published by the Forensic Science Regulator [insert issue] in all aspects that relate to my personal conduct. However, my organisation is not yet compliant with the required standard (insert standard not met) for (insert discipline/sub-discipline relevant to the present case). Annex [x] details the steps taken to mitigate the risks associated with this aspect of non-compliance.</u></p> <p>[Or]</p> <p><u>I have not fully complied with the Code of Conduct published by the Forensic Science Regulator [insert issue]. The nature of this non-compliance, to the best of my knowledge and belief, is that I am not/my organisation is not (delete as applicable) yet compliant with clause [insert clause from the Code of Conduct] and the required standard for (insert discipline/sub-discipline relevant to the present case). Annex # details the steps taken to mitigate the risks associated with this non-compliance.</u></p>			

<sup>17</sup> Where the expert is a forensic pathologist it may be appropriate to refer to the Code of Practice and Performance Standards for Forensic Pathology.

<sup>18</sup> Where the expert makes a declaration of compliance there is no obligation to provide additional information about the nature of the compliance. However, if the expert wishes to provide additional information it is acceptable to do so.

TEXT	SOURCE	FSR-I-400	COMMENT
<p><u>18.</u> [For Experts instructed by the Prosecution only]</p> <p>I confirm that I have read guidance contained in a booklet known as Disclosure: Experts’ Evidence and Unused Material which details my role and documents my responsibilities, in relation to revelation as an expert witness. I have followed the guidance and recognise the continuing nature of my responsibilities of disclosure. In accordance with my duties of disclosure, as documented in the guidance booklet, I confirm that:</p> <p>(a) I have complied with my duties to record, retain and reveal material in accordance with the Criminal Procedure and Investigations Act 1996, as amended;</p> <p>(b) I have compiled an Index of all material. I will ensure that the Index is updated in the event I am provided with or generate additional material;</p> <p>(c) in the event my opinion changes on any material issue, I will inform the investigating officer, as soon as reasonably practicable and give reasons.</p>	<p>Crown Prosecution Service Requirement from Annex K to the Disclosure Manual</p>		
<p><u>19.</u> I confirm that the contents of this report (<u>consisting of # pages each signed by me</u>) are true to the best of my knowledge and belief and that I make this report knowing that, if it is tendered in evidence, I would be liable to prosecution if I have wilfully stated anything which I know to be false or that I do not believe to be true.</p>	<p>S9(2)(b) Criminal Justice Act 1967 CrimPR19.4(k)</p>	<p>8.16</p>	<p>The statute requires a statement contain a declaration of truth. The CrimPR requires a report contain the same statement of truth.</p>

TEXT	SOURCE	FSR-I-400	COMMENT
Name			Although the name appears at the start of the series of declarations it appears sensible to have it at the point the signature appears.
Signed	S9(2)(a) Criminal Justice Act 1967  CrimPR 16.2	8.3	A statement must be signed by the author.  As the declaration of truth must be signed a report must also be signed.
Dated			There does not appear to be a requirement for the date of the expert report to be set out but it is common practice. It is also required from a practical standpoint.
Occupation			There is no requirement to state occupation but this is common practice.

19.1.1 Paragraph 17 of the above declarations addresses the issues of declaring non-compliance with the relevant standards and suggests stating what steps have been taken to assure the reliability of the evidence. Any explanation of the steps taken should address the following points.

- a. The competence of the persons undertaking the work;
- b. The validation of the methods being employed; and
- c. The issues set out in Part 19 A.5 of the Criminal Practice Directions.

**20. ANNEX 2**

20.1.1 It would be possible to provide a small number of the required declarations at the start of the report and include the rest in an annex to the report. The material which should be at the start of the report is considered in the text below.

**REPORT AND STATEMENT OF STATEMENT OF WITNESS**

(Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s. 9; Criminal Justice Act 1988, s. 30)

I (name) DECLARE THAT:

Age

I am an expert in the field of [expertise]

My qualifications and experience are [insert relevant information]

Relevant declarations are contained in Annex # to this report.

I confirm that the contents of this report (consisting of # pages each signed by me) are true to the best of my knowledge and belief and that I make this report knowing that, if it is tendered in evidence, I would be liable to prosecution if I have wilfully stated anything which I know to be false or that I do not believe to be true.

Name

Signed

Dated

Occupation



## 21. ANNEX 3

### CRIMINAL PROCEDURE RULES

#### 21.1 The Issue

21.1.1 The pre-April 2018 Criminal Procedure Rules<sup>19 20</sup> (CrimPR), at Rule 19.4(e), dealing with the content of experts' reports, had the following text.<sup>21</sup>

“(e) say who carried out any examination, measurement, test or experiment which the expert has used for the report and —

(i) give the qualifications, relevant experience and accreditation of that person,

(ii) say whether or not the examination, measurement, test or experiment was carried out under the expert's supervision, and

(iii) summarise the findings on which the expert relies;”

21.1.2 Adherence to Rule 19.4 by forensic science providers (FSP) led to two issues. Firstly, declaring the accreditation of the individual who undertook the work, as in forensic science accreditation usually refers to that held by an organisation not an individual, has not been required. Secondly, FSPs interpreted the requirement as demanding the listing of every person, referred to as assistants, involved in the case. In some areas of forensic science, for example DNA profiling, this meant the listing of a large number of individuals with associated data.

#### 21.2 New Provisions

21.2.1 The Criminal Procedure Rules Committee considered the issues noted above and determined that the appropriate course was that the term accreditation might better made optional and to modify the content of Part 19 to more

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<sup>19</sup> The Criminal Procedure Rules were introduced in 2005 [The Criminal Procedure Rules 2005 SI 384]. At that point there was a section, Part 33, reserved for content on expert evidence but it was blank. The section was populated by The Criminal Procedure (Amendment No. 2) Rules 2006 SI 2636]. In 2015 the CrimPR was restructured to remove remaining blanks, Part 33 became Part 19.

<sup>20</sup> The current approach is that the Rules introduced in 2015 have maintained that date reference although subsequently modified.

<sup>21</sup> This requirement was introduced to facilitate the use of the provisions of s127 Criminal Justice Act 2003. Those provisions need to be considered in conjunction with s115 of the Act which defined, for the purposes of that Act, the term 'statement'.

accurately reflect the requirements of s127 Criminal Justice Act 2003 and the manner in which they were expected to operate.

21.2.2 The result is the CrimPR were modified, as of April 2018, so that the existing Rule 19.4(e) has removed and replaced by the following text.

“(e) where the expert has based an opinion or inference on a representation of fact or opinion made by another person (for example, as to the outcome of an examination, measurement, test or experiment) —

(i) identify the person who made that representation to the expert,

(ii) give the qualifications, relevant experience and any accreditation of that person, and

(iii) certify that that person had personal knowledge of the matters stated in that representation;”

21.2.3 The above text makes clear that the first issue has been addressed by making the provision of details of accreditation conditional on the named individual having accreditation.

21.2.4 The second issue has been addressed by restricting the requirement to name assistants to those that have made a representation which has been relied on. This is a more accurate reflection of the requirements of s127.

### 21.3 Rule 19.4(c)

21.3.1 These provisions also have to be read in the context of Rule 19.4(c) which requires the report “contain a statement setting out the substance of all facts given to the expert which are material to the opinions expressed in the report, or upon which those opinions are based”.

21.3.2 This means that there are two situations which may arise.

a. Where the expert is provided with facts by others, and the expert does not assert the truth of those fact, then 19.4(c) applies and the expert should make clear the facts are provided to them and the expert does not certify their truth.

b. Where the expert utilises, results obtained by those assisting the expert and asserts the truth of those facts then the 19.4(e) provisions apply.

21.3.3 In the first of these scenarios the prosecution would establish the information by other admissible evidence.

21.3.4 However, there is some overlap of the provisions.

## 21.4 Guidance

21.4.1 Section 127 of the 2003 Act, entitled “Expert evidence: preparatory work”, is designed to simplify the admission of expert testimony by limiting the application of the hearsay rule in relation to the work of ‘assistants’ who worked with, or for, the expert in the development of the evidence. The provisions of CrimPR 19.4(e) were introduced to facilitate the operation of s127 and must be interpreted in that context.

## 21.5 Listing

### Assistants

#### *Assistants*

21.5.1 The provisions of CrimPR 19.4(e) clearly apply to assistants who undertake work on the case under the instruction of the expert producing the report. However, it does not apply to all such assistants.

21.5.2 The assistants who must be listed are those who have made a representation of fact or opinion on which the expert has directly relied on when developing their opinion.

21.5.3 In the context of an analytical laboratory this would cover assistants responsible for the following sorts of activity.

- a. The calibration of the equipment involved.
- b. The production of the analytical output (e.g. the chromatogram or electropherogram) from the data collected by the instrument.
- c. The basic interpretation of the analytical output (e.g. that certain drugs were present or the allele designations to be drawn from the electropherogram).

21.5.4 In more general areas it would cover assistants responsible for the following types of activity.

- a. The location of significant pieces of evidence.
- b. Identification of important features of an exhibit.

21.5.5 In each of these classes it can be seen that the assistant is responsible for a representation which is directly used by the expert in developing the latter's opinion.

21.5.6 Assistants who have undertaken roles (e.g. sample selection, sample preparation or basic analytical tasks) did not involve the making of a representation as discussed above. They do not need to be listed in the report – but see below on the need for records.

*Supervisors/Managers*

21.5.7 Where the work of assistants is overseen by a supervisor or manager and that person has personal knowledge of the information to be provided to the expert then that person may be the person making the representation. This would allow one supervisor/manager to be listed as opposed to a number of assistants.

21.5.8 Who made the representation would depend on the manner in which information is provided to the expert.

*Checker/Reviewer*

21.5.9 Where a person reviews the work of the assistants before it is considered by the expert then there are a couple of situations which have to be considered.

- a. The reviewer agrees with the analyst. In this case the representation being relied on is that of the analyst as opposed to the reviewer.
- b. The reviewer disagrees with the analyst and there is then a process by which the views of the analyst and the reviewer are considered and an agreed view provided to the reporting officer. In this case the expert is still relying on the view of the analyst.
- c. The reviewer disagrees with the analyst, there is no consideration of the different views to produce an agreed position and the reviewer's position is provided to the reporting officer. In this case the reporting officer is relying on the representation of the reviewer. However, there are issues with this position which are discussed below.

21.5.10 The third option discussed above would be an unusual way for a FSP to operate as it creates a difficult position with regard to reporting. The FSP has an unresolved difference of opinion between its own staff about the results so there is a question of what must be disclosed in line with judgments such as *R v Ward* and *R v Asiedu*.

Software Generated Information

21.5.11 In some areas (e.g. the work of the National DNA Database®) the information may be generated automatically by a software package. In this case it is not a representation of fact or opinion by a person. The provisions of 19.4(e) do not apply.

21.5.12 The provisions of 19.4(c) would still apply to the information.

Sub-Contractors

21.5.13 Where work is undertaken by sub-contractors these should be dealt with as if they were assistants in the same organisation.

Police Officers/Instructing Parties

21.5.14 It could be argued that experts are provided with information from those instructing them or from the police and that the CrimPR 19.4(e) requirements would apply in such circumstances.

21.5.15 This is clearly not the intention of the Rules and would place the expert in a position of having to include, in their report, information (e.g. the qualifications and experience of police officers) which was outside their knowledge.

21.5.16 There are more fundamental problems with the application of the provisions to such people.

21.5.17 The first is that the police, and others, do not normally make a representation of fact or opinion to an expert. They will, generally, provide the information they have available without an assertion that the information is true. Indeed, in many cases the expert is asked to opine on the likelihood of the evidence arising if the information is true.

21.5.18 The second is that the information provided by the police, or others, is not normally the basis of the expert's opinion. The expert should provide an opinion

about the probability of the scientific findings arising in a series of propositions. The information provided by the police, and others, goes to the determination of the propositions on which the opinion is given rather than the opinion.

21.5.19 There are some areas (e.g. alcohol technical defence) where the report produced by the expert appears to be heavily based on facts provided by the instructing party. However, in essence this is still a case of providing opinion based on propositions and falls within the 19,4(c) approach as opposed to the requirements of 19.4(e).

#### Other Experts

21.5.20 The provisions of CrimPR 19.4(e) are designed to require the listing of assistants etc whose work is not before the court in the form of a report but the wording is sufficient to cover other experts who have acted in the case.

21.5.21 In cases where an expert has based their opinion on the views of another expert (e.g. a forensic pathologist relying on the evidence of a forensic toxicologist) it is advisable to list the source of the expert opinion under CrimPR 19.4(e).

### **21.6 Qualifications/Experience**

21.6.1 The Rules require that the qualifications/experience of those making representations be provided.

21.6.2 Where a statement of qualifications or experience applies to more than one person who made a representation then a common text can be employed.

21.6.3 There would, if there were any relevant differences, still have to be individual statements about qualifications and relevant experience which was specific to an individual.

21.6.4 Where reliance is had on the work of another expert in the case that expert shall have issued a report. The expert relying on the report can therefore refer to that report in relation to the qualifications of the expert and the fact there is a declaration of truth.

## 21.7 Certifying

- 21.7.1 The Rules require that the expert ‘certify’ that the person listed under CrimPR 19.4(e) “had personal knowledge of the matters” which were the basis of the representation made.
- 21.7.2 This can be achieved by a statement in the report making clear that, in relation to assistants, they were the persons who undertook the work and therefore know the representations made were true.
- 21.7.3 Where other experts are listed under the provisions of CrimPR 19.4(e) it would be appropriate to note that they had issued a report which contained a declaration of truth.

## 21.8 Listing All Assistants

- 21.8.1 The new version of CrimPR 19.4(e) requires the listing of a sub-set of assistants but it does not preclude the listing of all assistants.
- 21.8.2 If an expert, or forensic science provider, has effective systems in place to list all assistants the change in the Rules does not require a change to the listing process. There may be a change in the information which has to be provided.

## 21.9 Disclosure

- 21.9.1 It must be stressed that the change in provisions is not intended to, nor must it be used to, obscure the use of assistants from the Criminal Justice System. The records of the case must make clear what work was done and who did that work. There must be linked records as to the qualifications, experience and competence of the people involved.
- 21.9.2 While this information to may not form part of the expert’s report it must be available to the Criminal Justice System.

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5 St Philip's Place

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B3 2PW

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